IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 242 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
AABEDMIYA MAHMEDALI & 3 - Opponent(s)

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Appearance :
MR HL JANI APP for Appellant(s) : 1,
None for Opponent(s) : 1 - 4.
NOTICE SERVED for Opponent(s) : 1 - 4.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 29/11/2007

ORAL JUDGMENT

1.0 This appeal is directed against the judgment and order dated 30.11.1995 passed by the learned Chief Judicial Magistrate,

Amreli in Criminal Case No. 1851 of 1991 whereby, all the respondents were acquitted from the charges leveled against them.

2.0 The brief facts of the prosecution case are that on 25.06.1991 a quarrel took place between respondent nos. 1 & 2 – original accused no. 1 & 2 and the complainant in a public place on some point which, ultimately, turned into a scuffle. Respondent nos. 3 & 4 also joined respondent nos. 1 & 2 in the said scuffle and all the four accused persons assaulted the complainant.

2.1 A complaint with respect to the aforesaid offence was filed against the respondents. Necessary investigation was carried out and, ultimately, charge-sheet was filed against the respondents before the Court of learned Chief Judicial Magistrate, Amreli. In order to prove the case against the respondents, the prosecution has examined ten witnesses Madhubhai Babubhai at Exhibit – 23, Maganbhai Babubhai at Exhibit – 26, Karamsinhbhai Mohanbhai at Exhibit – 27, Manubhai Mohanbhai at Exhibit – 28, Devrajbhai at Exhibit – 32, Parshottambhai Mohanbhai at Exhibit – 34, Aabidmiyan Masudmiyan at Exhibit – 38, Dr. Vaishnav at Exhibit – 40, Valkubhai Desabhai at Exhibit – 46, Atulkumar Tapubhai Jadav at Exhibit – 50 and documentary evidence in the form of complaint at Exhibit – 24, '*panchnama'* at Exhibit – 33, '*panchnama'* of the place of incident at Exhibit – 35, arrest '*panchnama'* at Exhibit – 39 and the medical certificate at Exhibit – 41. At the end of trial, the learned Magistrate acquitted the

respondents of the charges leveled against them.

3.0 Heard learned counsel for the respective parties and perused the entire documents on record. The principles which would govern and regulate the hearing of appeal by this Court against an order of acquittal passed by the trial Court have been very succinctly explained by the Apex Court in a catena of decisions. This Court has the power to re-consider the whole issue involved in the appeal, re-appraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial Court, if the said findings are against the weight of the evidence on record or, in other words, perverse.

4.0 In the case of ***M. S. Narayana Menon @ Mani v. State of Kerala & anr.*** reported in ***(2006) 6 S.C.C. 39***, the Apex Court has narrated about the powers of this Court in appeal against the order of acquittal. In para – 54 of the decision, the Court has observed as under;

> "54. In any event the High Court entertained an appeal treating to be an appeal against acquittal, it was in fact exercising the revisional jurisdiction. Even while exercising an appellate power against a judgment of acquittal, the High Court should have borne in mind the well-settled principles of law that where two views are possible, the appellate court should not interfere with the finding of acquittal recorded by the court below."

5.0 Even in a recent decision of the Apex Court in the case

of ***State of Goa v. Sanjay Thakran & anr. reported in (2007) 3 S.C.C. 755***, the Court has reiterated the powers of this Court in such cases. In Para-16 of the said decision, the Court has observed as under ;

> "16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the appellate Court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate Court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether any of the accused is connected with the commission of the crime he is charged with".
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> [*Emphasis supplied*]

6.0 Similar principle has been laid down by the Apex Court in two recent decisions in the cases of ***State of Uttar Pradesh v. Ram Veer Singh & ors.*** reported in ***2007 A.I.R. S.C.W. 5553*** and in ***Girja Prasad (Dead) by L.Rs. v. State of M.P.*** reported in ***2007 A.I.R. S.C.W. 5589***. Thus, the powers which this Court may exercise against an order of acquittal are well settled.

7.0 The trial Court has recorded a finding of fact that there are several contradictions and omissions in the evidence led by the prosecution witnesses on material point, including the details as regards the names of the accused persons and their respective roles in the alleged incident in question. Apart from that the 'panch' witness of the recovery 'panchnama' has also not supported the case of the prosecution. On the basis of the aforesaid findings, the trial Court has acquitted the respondents from the alleged offence in question.

8.0 In above view of the matter, I am of the opinion that the trial Court was completely justified in acquitting the respondent of the charges leveled against him. In my view, the findings recorded by the trial Court are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it. I am in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the trial Court and, hence, find no reasons to interfere with the same.

9.0 I am not discussing the evidence of each witness/s in detail in view of the observations made by the Apex Court in the case of ***State of Karnataka Vs. Hemareddy*** reported in ***A.I.R. 1981 S.C. 1417*** wherein it is held as under:

> "... This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudhary (1967)1 SCR 93: (AIR

> 1967 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

10.0 In the result, the appeal is dismissed. Office is directed to send the Records & Proceedings of the case, if lying with this Court, to the trial Court concerned forthwith.

[K. S. Jhaveri, J.]

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